

ORDINANCE NO. \_\_\_\_

AN ORDINANCE TO AMEND CHAPTER 26 AND CHAPTER 29 OF THE CODE OF SUSSEX COUNTY RELATING TO DISABILITY BENEFITS FOR SUSSEX COUNTY EMPLOYEES

WHEREAS, this ordinance establishes the parameters of Short Term and Long Term Disability Benefits for Sussex County Employees; and

WHEREAS, this ordinance will allow Sussex County to have better record keeping when dealing with disability issues of its employees.

NOW THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

**Section 1.** Amend Sussex County Code, Chapter 26, § 26-3, DEFINITIONS, by deleting existing subsection 26-3 and inserting in lieu thereof a new subsection 26-3 to read as follows:

**§ 26-3**            **Allowable Interruptions**

- A.    Time spent on Short Term Disability, under Section 29-31A B. The time during which an employee receives Long Term Disability under Section 29-31A C or a disability pension under this Chapter shall not be an allowable interruption and shall not count as service for a pension benefit under this Chapter.
- B.    Leaves of absence granted to employees.
- C.    Leaves of absence for entering the Armed Services of the United States, as described in this chapter.
- D.    Involuntary severance of employment not due to any fault or neglect on the part of such employee.
- E.    Voluntary severance of employment for a period not to exceed one year; but the employee shall not be considered a covered employee during any period of such interruption. The usual vacation allowed any employee of any department or agency shall not be considered an interruption from continuous service.

**Section 2.** Amend Sussex County Code, Chapter 26, § 26-6F. by deleting existing subsection 26-6F. and inserting in lieu thereof a new subsection 26-6F., DISABILITY PENSION, to read as follows:

## **§ 26-6 F. Disability Pension**

Effective January 1, 2012 (the "Effective Date") a disability pension shall no longer be available to covered employees who were not receiving a disability pension on the Effective Date. A covered employee who was receiving a disability pension on the Effective Date shall continue to receive such disability pension subject to this Section 26-6 F. A covered employee's status as disabled is reviewable by the Board every 12 months. The County may require, at its expense, that the covered employee undergo a physical examination by a physician of its choice to determine initial disability or continuing disability. Payments pursuant to Delaware's Workmen's Compensation Law shall not affect a covered employee's disability benefits under this Section 26-6 F. An employee shall be deemed disabled for the purposes of this section if such employee has a physical or mental disability which prevents the employee from performing the duties of such employee's position. Any covered employee who becomes disabled on or after the Effective Date shall receive disability benefits under the short and long term disability policies or plans, if any, that are maintained by the County.

**Section 3.** Amend Sussex County Code, Chapter 29, Article II § 29-31, LEAVES OF ABSENCE WITHOUT PAY, by adding a new subsection 31A. to read as follows:

### **§ 29-31A. Short Term and Long Term Disability Benefits.**

#### **A.**

An employee shall be deemed disabled for the purposes of this section if such employee has a physical or mental disability which prevents the employee from performing the duties of such employee's position, as determined by the County in its sole discretion. Notwithstanding the foregoing sentence, eligibility for disability benefits under the subsections B, and C, of this section shall be contingent upon meeting the requirements of those respective subsections.

#### **B. Short-term disability**

##### **(1)**

A permanent, full-time employee in classified or unclassified service who becomes disabled shall, beginning on the date of such employee's disability, become eligible to receive short-term disability benefits pursuant to this subsection B. Such short-term disability benefits shall continue for as long as such individual remains disabled, up to a maximum of 182 days (26 weeks). During the 60-day period beginning on the date of such employee's disability (the "60-Day Elimination Period"), such disabled employee shall not be eligible to receive the benefit described in paragraph 3 below, but shall be required to use any accrued leave that the disabled employee has accrued but not used. The

60-Day Elimination Period shall be considered part of the 182 days (26 weeks) of short-term disability for purposes of this subsection, and not an addition thereto.

(2)

If an employee returns to work for 1 day or less during the 60-Day Elimination Period but cannot continue to work thereafter, the period worked shall not be considered to have interrupted the 60-Day Elimination Period.

(3)

Disabled employees receiving short-term disability under this section shall remain eligible to receive medical and dental benefits through Sussex County's medical plan on the same basis that such disabled employee received such benefits prior to ceasing active work for Sussex County due to such disability. A disabled employee receiving short-term disability benefits under Sussex County's short-term disability plan shall continue to accrue sick leave, vacation time, creditable service, and pay increases.

(4)

A disabled employee eligible for short-term disability under this subsection shall for each pay period after the 60-Day Elimination Period while the disabled employee remains eligible for short-term disability under this subsection, receive 75% of the amount of regular base wages or salary such disabled employee earned or would have earned if he or she had worked regular full-time hours during the pay period immediately prior to becoming disabled. A disabled employee eligible for short-term disability payments under this paragraph (4) may use his or her unused accrued leave to supplement the short term disability benefit to equal up to no more than 100% of pre-disability compensation.

(5)

Once an employee exhausts his or her 60-Day Elimination Period, the employee shall not be eligible to utilize unused accrued leave in lieu of application for short term disability.

(6)

If an employee receiving disability benefits under this section returns to work on a full-time basis for 15 consecutive calendar days or longer, any succeeding period of disability for which the employee becomes eligible for disability benefits under this section shall constitute a new period of disability with a corresponding 60-Day Elimination Period.

(7)

Upon the exhaustion by an employee of the maximum short term disability benefit period set forth above in paragraph (1), and provided the employee has exhausted his or her Family Medical Leave Act of 1993 ("FMLA") [26 U.S.C. § 2601 *et seq.*] entitlement and/or is not FMLA eligible, such employee's

employment with the County shall terminate and such employee shall not accrue any service or retirement benefits.

**C. Long-term disability**

(1)

After receiving short-term disability benefits under this section for 182 days (26 weeks), a disabled employee who continues to meet the definition of disability under the provisions of the long-term disability benefit plan, if any, that is maintained by Sussex County at such time and who was a permanent, full-time employee in classified or unclassified service prior to such disability shall be eligible to begin receiving long-term disability benefits under the long-term disability benefit plan, if any, that is maintained by Sussex County at such time. Such long-term disability benefit plan shall be fully insured and the terms of the long-term disability insurance policy shall govern the provision of the long-term disability benefit plan.

(2)

The employment status of any individual receiving long-term disability benefits under this section shall be terminated and no service or retirement benefits shall accrue during any period for which a disabled former employee receives long-term disability benefits under this section. Upon the termination of such disabled former employee's employment status, the disabled former employee shall have the option to have such disabled former employee's unused sick leave and vacation time cashed out and paid to such disabled former employee, or if such disabled former employee feels that he or she will be able to return to work within the 6-month period immediately following the end of his or her short-term disability eligibility, the disabled former employee may elect to have his or her unused leave banked with the County until such disabled former employee's reinstatement as an employee of the County, provided that if such disabled former employee is not able to return to work within such 6-month period, the disabled former employee's leave shall be cashed out and paid to such disabled former employee.

(3)

Disabled former employees who are receiving long-term disability benefits under this section shall continue to be eligible for medical benefits under Sussex County's medical plan on the same basis as regular active full-time employees of Sussex County until the disabled former employee becomes eligible for Medicare parts A and B coverage, whether or not the disabled former employee enrolls in Medicare parts A and B, at which point, such disabled former employee's medical coverage under Sussex County's medical plan shall become secondary to Medicare coverage. If a disabled former employee's disability benefits terminate prior to becoming eligible for Medicare parts A and B, such disabled former employee's coverage under Sussex County's medical plan shall terminate. Sussex County shall have the right to amend, modify or terminate the

medical coverage of disabled former employees from time to time and at any time.

(4)

Notwithstanding subsection C(1) above, eligibility for long-term disability benefits under this section for the initial two-year period beginning upon the day after the 182-day period for short-term disability shall only continue if the disabled former employee satisfies the definition of disability under the County's long-term disability benefit plan.

(5)

A disabled former employee eligible for long-term disability under this subsection shall, while the disabled former employee remains eligible for long-term disability under this subsection, receive 60% of the amount of regular wages or salary such disabled former employee earned or would have earned if he or she had worked regular full-time hours during the pay period immediately prior to becoming disabled, offset by certain other amounts received by the former employee, including but not limited to, Social Security Disability benefits, as set forth in the policy of insurance under which the long-term disability benefits are provided.

(D)

Neither the short term disability benefits nor the long term disability benefits set forth in this section shall be subject to vesting. The short term disability benefits and long term disability benefits may be amended, modified, terminated or suspended by County Council at any time and from time to time.

**Section 4.** Effective Date. This ordinance shall become effective on January 1, 2012.

#### Synopsis

This ordinance eliminates the Sussex County Disability Pension after the effective date of this ordinance. This ordinance establishes the parameters of qualification for short term and long term disability benefits for Sussex County employees. Long term Disability would be paid by a long term disability insurance plan.